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CLEARINGHOUSE RULE 95-038

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

- a. According to s. 227.21 (2) (a), Stats.:

To avoid unnecessary expense, an agency may, with the consent of the revisor [of statutes] and the attorney general, adopt standards established by technical societies or organizations of recognized national standing by incorporating the standards in its rules by reference to the specific issue or issues of the publication in which they appear, without reproducing the standards in full.

Section Ins 120.50 states that hospitals must use as an accounting system generally accepted accounting principles, as interpreted in “the most recent edition” of a certain specified publication as well as “other guidance on financial accounting and reporting matters for providers of health care services offered by the American institute of certified public accountants.” The Note following this section indicates that copies of the specified publication and “other guidance” may be obtained from the American Institute of Certified Public Accountants.

The following comments pertain to s. Ins 120.50 and the Note following that section:

- (1) The rule does not make clear that the requisite consent of the Revisor of Statutes and of the Attorney General has been obtained. If both consents have not been obtained, the rule cannot incorporate standards in this manner. [See s. 227.21 (2) (a), Stats.] If both consents have been obtained, the

analysis to the rule should indicate that the consents have been given. [See s. 2.08 (1), Manual.]

- (2) Under s. 227.21 (2) (a), Stats., standards of a technical society or organization of recognized national standing may be incorporated in a rule by reference to “the publication” in which those standards appear. While s. Ins 120.50 specifies the name of one publication that is incorporated by reference, s. Ins 120.50 also incorporates by reference “other guidance on financial accounting and reporting matters for providers of health care services offered by the American institute of certified public accountants.” The reference to “other guidance on financial accounting and reporting matters...” is inappropriate and should be replaced with the titles of the specific publications that are being incorporated.
- (3) Section 227.21 (2) (a), Stats., provides that the “specific issue or issues of the publication” may be incorporated by reference. Therefore, the specific issue of the publication entitled “Audits of Providers of Health Care Services” should be cited instead of referring to “the most recent edition” of that publication. Section 227.21 (2) (a), Stats., does not provide for incorporating all future changes in a publication by referring to “the most recent edition” of that publication.
- (4) According to s. 227.21 (2) (b), Stats., “[e]ach rule containing an incorporation by reference shall state how the material incorporated may be obtained ***and that the standards are on file at the offices of the agency, the secretary of state and the revisor [of statutes]***” (emphasis added). While the rule states how the material may be obtained, it does not comply with the statutory requirement to state explicitly that the standards are on file with the Office of the Commissioner of Insurance (OCI), the Secretary of State and the Revisor of Statutes.

b. According to s. 227.15 (1), Stats., an agency may not hold a public hearing on a proposed rule until it has received the report of the Legislative Council Staff Rules Clearinghouse. The rule was received by the Rules Clearinghouse on February 14, 1995 and, under s. 227.15 (2) (intro.), Stats., the deadline for submitting the report to OCI is March 14, 1995. However, according to the notice of hearing submitted with the rule, a public hearing on the rule has been scheduled for March 13, 1995.

2. Form, Style and Placement in Administrative Code

a. SECTION 1 of the rule creates s. Ins 120.50 which includes the underscored phrase “audits of providers of health care services.” Underscoring is reserved for amending a rule to show inserted material and should not be used in a section that is being created. [See s. 1.06 (1), Manual.]

b. SECTION 2 of the rule provides that the rule first applies to hospitals for the fiscal year beginning after the first March 31 after the effective date of the rule. OCI might consider

placing this provision in the body of s. Ins. 120.50 for the benefit of a future rule reader. For example, the first sentence of s. Ins 120.50 could begin as follows: “Beginning with the hospital’s first fiscal year that begins after March 31, 1996, each hospital shall use....” [As it will not be possible to complete the rules promulgation process and have the rule become effective before March 31, 1995, presumably the “first March 31” referred to in the proposed order will be March 31, 1996.]